

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201510015	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/22/2015 4:00 AM	Location of Incident: Malcolm X Boulevard at West131st Street	Precinct: 32	18 Mo. SOL 5/22/2017	EO SOL 5/22/2017	
Date/Time CV Reported Tue, 11/24/2015 12:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 11/24/2015 12:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Isabelo Adames	15260	948590	028 PCT
3. POM Gobinjee Bania	28863	934315	028 PCT
4. An officer			Unknown

Officer(s)	Allegation	Investigator Recommendation
A.POM Isabelo Adames	Discourtesy: PO Isabelo Adames spoke discourteously toward § 87(2)(b)	
B. An officer	Discourtesy: An officer spoke discourteously toward § 87(2)(b)	
C.POM Isabelo Adames	Abuse: PO Isabelo Adames frisked § 87(2)(b)	
D.POM Isabelo Adames	Abuse: PO Isabelo Adames searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Isabelo Adames	Abuse: PO Isabelo Adames refused to provide his shield number to § 87(2)(b)	
F.POM Gobinjee Bania	Abuse: PO Gobinjee Bania refused to provide his shield number to § 87(2)(b)	
G. Officers	Abuse: Officers refused to provide their shield numbers to § 87(2)(b)	
H.POM Isabelo Adames	Abuse: PO Isabelo Adames summonsed § 87(2)(b) for disorderly conduct.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on November 24, 2016. Although two of the four subject officers were immediately identified, only a general description (and no police documentation) was available for the second pair of subject officers. Efforts to identify these officers, including by interviewing all officers from the 32nd Precinct who fit the description, extended the investigation time slightly past its 90-day mark.

On November 22, 2015, at approximately 4:00am, § 87(2)(b) was pulled over on West 131st Street and Malcolm X Boulevard in Manhattan by PO Isabelo Adames and PO Gobinjee Bania of the 28th Precinct. While § 87(2)(b) attempted to locate his documentation, PO Adames allegedly asked him, “Why are you taking so fucking long?” (**Allegation A**). Moments later, an officer allegedly told § 87(2)(b) to “Get out of the fucking car!” (**Allegation B**). Once outside of his vehicle, PO Adames allegedly asked § 87(2)(b) “Why are you doing so fucking much?” (**within Allegation A**), and an officer allegedly asked, “Why are you making shit so fucking complicated?” (**within Allegation B**).

PO Adames frisked § 87(2)(b) (**Allegation C**), and also searched the front areas of § 87(2)(b)'s vehicle (**Allegation D**). Before parting ways, § 87(2)(b) asked PO Adames, PO Bania, and two unidentified officers who arrived during the incident to assist, for their shield numbers. Each officer allegedly told § 87(2)(b) that all of that information could be found on the summons, and none of them provided it to him verbally (**Allegations E-G**).

PO Adames summonsed § 87(2)(b) for disorderly conduct (**Allegation H**). He also received a traffic summons for making an improper turn and a summons for failure to provide proof of insurance.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his in-person statement on December 8, 2015, § 87(2)(b)
- A FOIL request was filed on March 2, 2016, to determine whether any notices of claim were filed. The results will be added to the case file upon receipt.
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 1).
- This is PO Bania's first CCRB complaint during his 11-year tenure with the NYPD.
- This is the second CCRB complaint filed against PO Adames during his 5-year tenure with the NYPD. The first involved one allegation, which was closed as complainant uncooperative. § 87(2)(g)

Potential Issues

§ 87(2)(b) and § 87(2)(b) were both seated in the rear seats of § 87(2)(b)'s vehicle during the stop. Contact was made with § 87(2)(b) and he provided an unverified telephone

statement. § 87(2)(b) stated that § 87(2)(b) although present, was ill and asleep during the incident. He did not have her contact information, and the additional database searches that were conducted to locate her were unsuccessful.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) testified that two unidentified officers, both of whom he described as 5'10" tall, averagely built, dark-haired white males in uniform, arrived at the location during the vehicle stop in a marked SUV (BR 2).

PO Adames and PO Bania both testified that two officers from the 32nd Precinct stopped to provide backup for them during the vehicle stop. Neither PO Adames nor PO Bania, both of whom are assigned to the 28th Precinct, knew the officers who stopped and stated that they did not call these officers to the scene themselves. PO Adames and PO Bania each described the officers as uniformed males, one white and one Asian (BR 3, BR 4).

PO David Chu, PO Mohammad Malek, and PO Azad Mahmood, were the only three Asian males assigned to the 32nd Precinct who were on duty during the time of the incident. PO Chu, PO Malek, and PO Mahmood's partner (PO Michael Capobianco), were all interviewed at the CCRB. They each had memo book entries placing them and their partners at other locations during the time of the incident, and they each denied having stopped to provide backup for a vehicle stop. None of the officers were familiar with PO Bania or PO Adames and none recognized § 87(2)(b) from his photograph (BR 11, BR 6-8).

Investigative Manager Edwin Pena contacted the 32nd Precinct ICO, Lt. Tanya Bennett, on February 16, 2016. She was unable to identify any marked SUVs that were in use by the 32nd Precinct on the incident date.

§ 87(2)(g)

Allegations Not Pled

- Force – Physical Force:

§ 87(2)(b) alleged that PO Bania pushed him against the vehicle in order to handcuff him, stating that handcuffing him took only seconds. He also alleged that, after § 87(2)(b) lay down on the ground on his own accord and told the officers to arrest him if they wished, PO Bania instructed him to stand up and then pushed him against the car again. § 87(2)(b) reported no injuries from these moments of physical contact, and the officers acknowledged that § 87(2)(b) had to be handcuffed and physically restrained. § 87(2)(g)

Allegation A – Discourtesy – PO Isabelo Adames spoke discourteously toward § 87(2)(b)

§ 87(2)(b) reported that PO Adames asked him, “Why are you taking so fucking long?”, and later, “Why are you doing so fucking much?” He also reported that either PO Bania or PO Adames, he was unsure which one, had asked, “Why are you making shit so fucking complicated?” (BR 2).

PO Adames denied asking § 87(2)(b) “Why are you taking so fucking long?” He did not recall whether he asked § 87(2)(b) “Why are you doing so fucking much?”, nor did he recall whether he asked § 87(2)(b) “Why are you making shit so fucking complicated?” He did not recall whether he used profanity toward § 87(2)(b) generally, and moreover, he acknowledged asking § 87(2)(b) “Why are you making this situation out of control?” and “Why are you making this more than it needs to be?” (BR 3).

PO Bania testified that he did not make these statements to § 87(2)(b) nor did he hear PO Adames or any other officer make them (BR 4).

§ 87(2)(b) an acquaintance of § 87(2)(b)s, remained inside of the car for the entirety of the stop. He stated, in an unverified telephone statement, that he heard PO Adames tell § 87(2)(b) to “hurry up,” as § 87(2)(b) was locating his paperwork. § 87(2)(b) also reported that both PO Adames and PO Bania cursed, but was unable to recall what exact statements were made. When asked directly whether he heard any officer use the word “fuck,” § 87(2)(b) affirmed that one or both officers did use the word “fuck,” but he again could not recall the context(s) in which it was used. § 87(2)(b) noted that the profanity made little impression on him because he finds that police officers often or always use profanity (BR 5).

PO Adames denied making one of the discourteous statements that § 87(2)(b) alleged he made, but notably, he did not recall whether or not he made the rest of the alleged statements. Furthermore, PO Adames acknowledged making very similar statements to those alleged (insofar as he acknowledged asking § 87(2)(b) why he was escalating things), and did not recall whether or not those statements included the word “fuck.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Officers are to be courteous and respectful when interacting with the public. NYPD Patrol Guide Procedure 203-09 (BR 9).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – An officer spoke discourteously toward § 87(2)(b)

§ 87(2)(b) reported that an officer told him to, “Get out of the fucking car.” He did not know whether it was PO Adames or PO Bania who made this statement.

§ 87(2)(b) although he reported hearing discourteous remarks as discussed above, could no more differentiate between the officers than could § 87(2)(b) (BR 5). Neither PO Adames nor PO

Bania acknowledged having made either of these statements toward § 87(2)(b) (BR 3, BR 4).

§ 87(2)(g)

Allegation C – Abuse of Authority – PO Isabelo Adames frisked § 87(2)(b)

It is undisputed that PO Adames frisked § 87(2)(b). PO Adames acknowledged performing the frisk, PO Bania testified to observing PO Adames perform it, and although § 87(2)(b) did not report this allegation during his in-person statement, he did allege the frisk during his initial telephone statement. Therein, he reported that PO Adames handcuffed him and then performed the frisk (BR 3, BR 4).

PO Adames testified that § 87(2)(b) was uncooperative from the beginning of the vehicle stop. He “took his time” finding his documentation, which he ultimately was unable to produce, and he raised his voice, telling the officers, “Fuck y’all,” in addition to repeatedly claiming that he had been stopped because he was black. Once PO Adames had § 87(2)(b) exit from the vehicle on the basis of his behavior, § 87(2)(b) continued to verbally protest. He flailed his arms when PO Adames attempted to physically guide him to the rear of the vehicle, and once standing at the rear, § 87(2)(b) pushed the chest areas of both PO Adames and PO Bania, causing them to stumble backward slightly. § 87(2)(b) then took himself voluntarily to the ground, saying, “Shoot me in the back, go ahead!” PO Adames picked him up off of the ground after a few seconds and handcuffed him. PO Adames testified that he “didn’t know why § 87(2)(b) was acting the way he was.” He then frisked him for weapons, during which he did not feel any suspicious objects, and then removed the handcuffs (BR 3).

PO Bania testified that, while PO Adames returned to the police vehicle to check § 87(2)(b)’s identity, he observed § 87(2)(b) opening and closing the driver’s side door three to four times despite PO Bania’s instructions that he stop doing so. § 87(2)(b) then exited from the vehicle on his own accord, asking, “Am I arrested?”, at which time PO Bania instructed him to walk to the rear of his vehicle. There, § 87(2)(b) flailed his arms while repeating, “Are you going to arrest me?”, getting close to PO Bania’s face, and making guttural sounds as though he were going to spit. In addition, § 87(2)(b) made unusual movements during this time, including repeatedly sitting or lying on the pavement, standing back up and leaning against or on his vehicle. When PO Adames returned, § 87(2)(b)’s hands were close to PO Bania’s face, so the officers decided to handcuff § 87(2)(b) for their safety (BR 4).

PO Bania observed PO Adames frisk § 87(2)(b) but could not recall at what point during the incident he did so, nor could he recall whether § 87(2)(b) was handcuffed at the time. PO Bania himself never suspected § 87(2)(b) of being in possession of a weapon and he did not recall whether he observed any bulges on his person (BR 4).

A frisk requires reasonable suspicion that an individual is armed and dangerous. People v. DeBour, 40 N.Y.2d 210 (1976)(BR 10).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority – PO Isabelo Adames searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Adames searched § 87(2)(b)'s vehicle during the vehicle stop. What remains in dispute is the extent and propriety of the vehicle search.

§ 87(2)(b) testified that PO Adames searched the front areas of his vehicle for 30-45 seconds, emerging with his passport. § 87(2)(b) stated that his passport was positioned directly on the driver's seat at this time (BR 2).

PO Adames testified that, en route back to the police vehicle to prepare § 87(2)(b) the traffic summonses, he searched the middle console of the front area of § 87(2)(b)'s vehicle for a duration of 5 seconds. He did so in hopes of locating § 87(2)(b)'s identification, as motorists often lie about not having documentation when they in fact do. He had further reason to believe that this may be the case here, as he had observed § 87(2)(b) placing several documents inside of that console just prior to exiting from his vehicle. PO Adames did not search anywhere else in the vehicle and he did not succeed in locating any documentation. He issued § 87(2)(b) three summonses by tracing his identity through § 87(2)(b)'s license plates, thereby determining that § 87(2)(b) did have a valid license (BR 3).

PO Bania testified to observing PO Adames enter § 87(2)(b)'s vehicle through the driver's side door for a few seconds, but could not recall when this occurred or whether PO Adames emerged with anything from the vehicle (BR 4).

§ 87(2)(b) who remained in the back seat for the entire vehicle stop, reported in an unverified telephone statement that PO Adames opened the driver's side door and leaned his head and upper body inside of the vehicle. He then searched the driver's seat area and possibly other areas in the front, but § 87(2)(b) was not paying close attention because § 87(2)(b) was ill at the time and he was tending to her. He estimated that PO Adames was inside of § 87(2)(b)'s car for one or two minutes (BR 5).

A limited search of the vehicle to obtain the motorist's insurance and registration is permissible only in the event that less-intrusive alternatives for verifying ownership cannot be conducted. People v. Pryor, 26 Misc. 3d. 997 (2009)(BR 13).

§ 87(2)(g)
[REDACTED]

Allegation E – Abuse of Authority – PO Isabelo Adames refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that, before parting ways, he told PO Adames that he wanted his shield number and that PO Adames informed him that it would be on the summons. § 87(2)(b) testified that the issuing officer's handwriting was difficult to read (BR 2). § 87(2)(b) did not report hearing § 87(2)(b) ask any officer for his shield number, stating that he had difficulty hearing the specific conversation that took place outside of the vehicle while he remained seated inside of it (BR 5).

PO Adames acknowledged that § 87(2)(b) asked him for his name and shield number and testified that he provided these pieces of information verbally. He also showed § 87(2)(b) where on the summons his name and tax registry identification number were located. PO Bania corroborated PO Adames's statement with regard to this allegation.

Officers are to state their rank, name, shield number, and command, or otherwise provide such information, to anyone who requests it. NYPD Patrol Guide Procedure 203-09.(BR 09).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation F – Abuse of Authority – PO Gobinjee Bania refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that, before parting ways, he told PO Bania that he wanted his shield number and that PO Bania informed him that it would be on the summons. Upon reviewing his summonses, § 87(2)(b) noted that only one officer's information was listed. He never obtained PO Bania's shield number.

PO Bania testified that § 87(2)(b) requested his name and shield number and that PO Bania provided both pieces of information to him verbally. PO Adames testified to hearing PO Bania provide his name and shield number to § 87(2)(b) (BR 4, BR 3).

As discussed above, § 87(2)(b) was unable to hear the conversation taking place between § 87(2)(b) and the officers, and was therefore unable to address this specific allegation (BR 5).

§ 87(2)(g)

Allegation G – Officers refused to provide their shield numbers to § 87(2)(b)

§ 87(2)(b) alleged that at the conclusion of the vehicle stop, he asked the two backup officers individually for their shield numbers and that they each told him that such information would be included on the summonses. Upon reviewing his summonses, he found that not to be the case (BR 2).

§ 87(2)(g)

Allegation H – Abuse of Authority – PO Isabelo Adames summonsed § 87(2)(b) for disorderly conduct.

PO Adames issued § 87(2)(b) a moving violation summons for making an improper left turn, a summons for failing to provide proof insurance, as well as a criminal court summons for disorderly conduct – violent behavior. The narrative of the summons indicates that § 87(2)(b) refused to give identification when asked several times; raised his voice causing public alarm; flailed his arms and causing a tumultuous situation; was being very non-compliant (BR 12).

As discussed in Allegation C, PO Adames testified that § 87(2)(b) refused to provide his documentation, pushed PO Adames and PO Bania in the chest once outside of the vehicle, yelled

profanity, and threw himself on the ground. Regarding the disorderly conduct summons, PO Adames pointed to these behaviors and stated that it was issued to § 87(2)(b) on the basis of his “belligerent actions,” namely, those listed above. He denied observing any crowd of civilians gathering during the stop, nor did he testify to seeing any individuals watching the incident from afar. Although § 87(2)(b) and § 87(2)(b) were inside of the vehicle during the incident, PO Adames reported that one or both of them attempted to get § 87(2)(b) to relax; to this end, PO Adames collected their names and recorded them on the fly sheet of his memo book in the event that he would later require witness statements.

PO Bania similarly reported that the passengers told § 87(2)(b) to calm down. He did not report the presence of any other civilians on scene. He described § 87(2)(b) as “disoriented,” and stated that he remained upset about the stop throughout the 25-35 minute incident.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating the risk thereof: he or she engages in fighting or in violent, tumultuous, or threatening behavior. New York State Penal Law 240.20 (BR 15). For an action to constitute disorderly conduct, the defendant has to intend to create a threat to public safety by their conduct. People v. Baker 20 N.Y.3d 354 (2013)(BR 14). In deciding whether an act carries the public ramifications necessary to be considered “disorderly conduct,” the nature and number of people attracted by the alleged commotion must be taken into account. People v. Dennis. 13. Misc. 3d 41 (2006)(BR 16).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date